

**REMARKS**

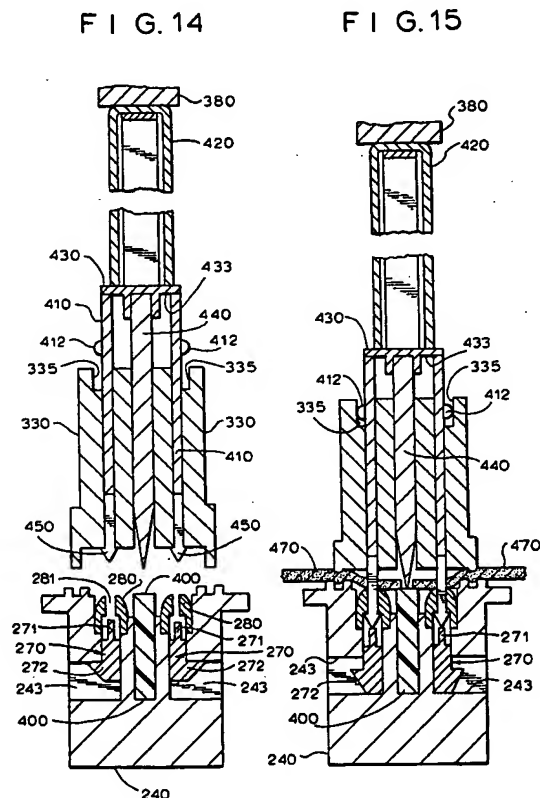
The above-referenced application has been reviewed in light of the Office Action mailed January 10, 2005. By the present Amendment, the Applicants have amended claim 23. It is respectfully submitted that the claims present in this application are fully supported by the specification, introduce no new subject matter, and are patentable over the prior art. Prompt and favorable consideration of the claims as amended is respectfully requested.

In the Office Action, claims 23 and 24 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement and under 35 U.S.C. § 112, second paragraph, as being indefinite. Claim 23 has been amended to substitute "stiffener" for "spacer" and to further recite a slot for slidably receiving an interlock. Support for a stiffener plate having a slot for receiving an interlock is disclosed on pages 9 and 20 of the specification as filed. The subject matter recited in amended claims 23 and 24 is clearly supported in the specification and the drawings, e.g. see FIGS. 4 and 20A. In addition, antecedent basis for the recitation of "stiffener" in amended claim 23 is found in claim 1. Accordingly, withdrawal of the rejection under 35 U.S.C. § 112, first and second paragraphs is respectfully requested.

In the Office Action, claims 1 and 20-24 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 5,100,042 to Gravener et al (the '042 patent). The Examiner asserted that the '042 patent discloses a frame having first and second ends, a body portion (10, 20) defining a stationary handle (11, 21) secured to the end frame, a trigger (130) pivotably secured to the body, a head portion including an anvil assembly (240, 400, 270) and cartridge assembly (460), anvils (270) including a plurality of staple forming pockets and

defining a channel for receiving a stiffener plate (400). Applicants respectfully disagree with the Examiner's assertion.

The '042 patent discloses a surgical stapling apparatus for applying two-part fasteners to body tissue which includes "retainer support arm 240, anvil block 400, retainer holding strips 270, and retainers 280" (Column 8, lines 41-43). In addition, the '042 patent discloses that "retainers 280 are preferably mounted on retainer mounting strips 270 in arm member 240 such that each retainer is aligned with a corresponding fastener portion in the respective fastener slots 332" (Column 9, lines 2-5) and that anvil block 400 "provides a means for contacting tissue" and "a backstop surface 401 for the cutting edge 441 of the knife" (Column 9, lines 29-36). Actuating the surgical stapling apparatus moves a fastener portion 450 into engagement with the retainer 280 and knife 440 into contact with block 400 (see FIGS. 14 and 15 reproduced below).



Claim 1 recites a surgical stapling device having, *inter alia*, an anvil assembly including "an anvil and a stiffener plate, the anvil including a plurality of staple forming pockets and defining a channel, the stiffener plate being configured to fit substantially within the channel and providing added strength to the anvil assembly to permit a reduction in size of the head portion."

There is no disclosure in the '042 patent of any such structure. More specifically, there is no disclosure of a stiffener plate anywhere in the '042 patent which is configured to fit substantially within a channel in the anvil assembly to provide added strength to the anvil assembly as recited in claim 1. Block 400 identified by the Examiner as "stiffener plate (400)" is merely a backstop for a cutting edge of a knife. Nothing in the '042 patent suggests that block 400 provides additional strength to the anvil. As a matter of fact, it is not even clear from the specification of the '042 patent what material block 400 is constructed from.

It is respectfully submitted that claim 1 is neither anticipated nor suggested by the '042 patent and is in condition for allowance. Since claims 20-24 depend either directly or indirectly from amended claim 1, it is respectfully submitted that these claims are also in condition for allowance.

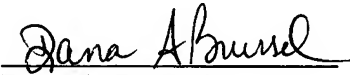
Claim 19 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over the '042 patent. The Office Action asserted that it would have been obvious to select stainless steel as a material of construction. As discussed above, claim 1 is not anticipated or suggested by the '042 patent. Since claim 19 depends directly from claim 1, it is respectfully submitted that claim 19 is not suggested by the '042 patent and the rejection of the Office Action has been overcome.

Appl. No. 10/783,126  
Amdt. dated February 17, 2005  
Reply to Office Action mailed January 10, 2005

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 1 and 19-24, are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, he is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

Carter, DeLuca, Farrell & Schmidt, LLP  
445 Broad Hollow Road - Suite 225  
Melville, New York 11747  
Tel.: (631) 501-5713  
Fax: (631) 501-3526

  
Dana A. Brussel  
Reg. No. 45,717  
Attorney for Applicants

**Send correspondence to:**  
Chief Patent Counsel  
Tyco Healthcare Group  
150 Glover Avenue  
Norwalk, CT 06856